

REMARKS

I. Status of the claims

Claims 1, 3-6, 9, 11, 12, 14-20, 23-25 and 27 are pending.

II. Double Patenting rejection

Claims 1, 3-6, 9, 11, 12, 14-20, 23-25 and 27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over certain claims of co-pending application no. 10/571,998 ("the '998 application"). Applicants confirm that the '998 application has not issued as a patent. Accordingly, Applicants are not required to respond to the instant rejection at this time.

It is also noted that the instant application was filed prior to the '998 application. Thus, according to the rules of practice, if the obviousness-type double patenting rejection is the last remaining rejection in the instant application and rejections remain in the '998 application, the obviousness-type double patenting rejection of the instant claims should be withdrawn and the application permitted to issue as a patent without the filing of a terminal disclaimer. *See* MPEP §804.I.B.1. This appears to be the case here, for at least the following two reasons: (i) a Request for Continued Examination was of the '998 application was submitted to the USPTO on February 9, 2009; and, as we respectfully point out to the Examiner below, the '998 application **is not** available as prior art over the instant application (contrary to the Examiner's contention), so the instant claims should be allowed upon submission of this response, and a Terminal Disclaimer should not be necessary.

Nevertheless, in the interest of furthering prosecution in the instant case, submitted herewith is a Terminal Disclaimer over U.S. patent application 10/571,998.

III. Claim rejection for obviousness

The pending claims have been rejected under 35 U.S.C. 103(a) as obvious over the '998 patent. According to the Examiner, the '998 application is additionally available under 35 U.S.C. §102, and is thus available as an obviousness reference. Applicants respectfully traverse.

The priority date of the instant application precedes the priority date of the '998 application. More specifically, the priority date of the instant application is **July 23, 2002** (the filing date of JP 2002-214603, from which the instant application claims priority). The '998 application, on the other hand, claims priority to PCT/JP04/00576 (filed January 23, 2004), which published on **March 3, 2005**, which itself claims priority to JP 2003-321155 (filed September 12, 2003), which did not publish until **April 7, 2005**. Therefore, the '998 application is not available as an obviousness reference under 35 U.S.C. 103(a) against the instant claims, and this rejection should be withdrawn.

IV. Discrepancy over finality of the instant Office Action

The Applicants note that Summary page as well as p. 2 of the instant Office Action states that the Office Action is "non-final." However, paragraph 8 at p. 4 of the instant Office Action states that "this action is made final." Applicants note also that the USPTO PAIR website also refers to the instant Office Action as non-final.

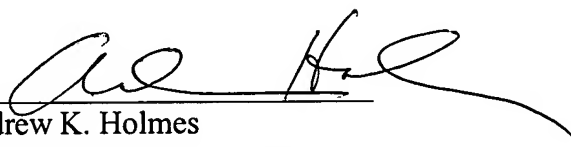
Applicants note also that Applicants' representative (undersigned attorney Andrew K. Holmes) spoke with the Examiner, who confirmed that the instant Office Action is indeed non-final. Accordingly, Applicants note that they are replying to a non-final Office Action herein.

V. Conclusion

This application is believed to be in condition for allowance, which is earnestly solicited. If the Examiner believes there are further issues that could be advance by an interview or entry of an Examiner's Amendment, the Examiner is invited to contact the undersigned attorney.

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Respectfully submitted,

By 

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